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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/731,396	12/09/2003	Robert W. Kenny	20006.0001US01	4532

7590 05/01/2007
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EXAMINER

LE, HUYEN D

ART UNIT	PAPER NUMBER
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3751

MAIL DATE	DELIVERY MODE
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05/01/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/731,396

Applicant(s)

KENNY ET AL.

Examiner

Huyen Le

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6, 10-21, 23-39 and 41-44 is/are pending in the application.
- 4a) Of the above claim(s) 45-50 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6, 10-21, 23-39 and 41-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-3, 6, 10-14, 17-20, 29-31, 33, 35-39, 41-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sage et al (4,630,323) in view of Hess et al (4,574,976).

The Sage et al reference discloses a guard system comprising: a first guard panel 11 comprising a flexible material, a padding layer 15 that is disposed between a first sheet and a second sheet, and wherein the first sheet and the second sheet are joined at one edge (located near 52 in Fig. 8) to contain the padding layer 15; a second guard panel 12 comprising a flexible material; and a junction 52 (Fig. 8) between the first guard panel 11 and second guard panel 12 allowing the first guard panel 11 and second guard panel 12 to move relative to one another, wherein the junction 52 comprises a hem.

Although Sage et al does not disclose a flap for covering the drain opening, attention is directed to the Hess et al reference which teaches a flexible drain cover 10 attached over a drain opening 16 by a Velcro strip 11.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ a drain cover having a hook and loop fastener

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on the drain opening of the Sage et al liner in view of the teaching of Hess et al for covering the drain opening.

Regarding claims 12 and 41, the first sheet is plastic and the second sheet (top surface of panel 11) is a non-skid material (col. 3, lines 24-26).

Regarding claims 3, 14, 42, the first sheet and the second sheet are plastic.

Regarding claim 10, the panel includes an adhesive layer attached to the second side of the enclosure for adhering to a surface of a fixture (col. 2, lines 42-44).

Regarding claim 30, the fixture guard system comprises a junction 42 (or 45 or 52) allowing rotation of the first fixture guard panel 11 relative to the second panel 12.

Regarding claim 39, a sheet 16 of the panel can be a non-slip material other than plastic (see col. 2, lines 66-68).

3. Claims 4, 15, 24 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sage et al (4,630,323) in view of in view of Hess et al (4,574,976) described above and further in view of Spier (3,133,292).

Although the Sage reference does not teach that the enclosure is made of woven polyethylene, attention is directed to the Spier reference which teaches an enclosure of a fixture guard made of woven polyethylene.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the woven polyethylene on the Sage guard panel in view of the teaching of Spier, wherein doing so would be an obvious design choice.

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4. Claims 16, 21, 23, 25-28 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sage et al (4,630,323) in view of Hess et al (4,574,976) as described above and further in view of Smith et al (3,563,837).

The Sage et al reference discloses a guard panel for a fixture comprising: an enclosure 11 comprising a first side and a second side made of a flexible material 16; and an inner layer having foam padding 15 disposed within the enclosure 11.

Although the Sage et al reference does not teach stitching between the enclosure 11 and the padding 15, attention is directed to the Smith et al reference which teaches stitching 21 between the enclosure 11 and the padding 15 for securing and preventing the padding material in the enclosure from shifting under impact.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to providing stitches on the Sage guard panel in view of the teaching of the Smith et al reference for securing and prevent the padding material in the enclosure from shifting under impact.

Response to Arguments

5. Applicant's arguments filed 02/20/2007 have been fully considered but they are not persuasive.

Regarding to applicant's argument that Hess is non-analogous art relative to the claim recitation and that the drain plug in Hess to hold back water is not in the field of applicant's endeavor which is protecting a surface from damage, examiner disagrees with the applicant. The claimed invention calls a flap covering an opening. In Hess, the flap 10 is not only a drain stopper for holding back water but also a cover for covering

the opening 16 and thus inherently protecting a surface. The use of Hess does not require the teaching have to be in analogous art relative to the claimed recitation. As long as the teaching meets the structures as claimed, the basis for rejection based on the teaching deems proper.

Regarding applicant's argument that there is no motivation to combine the bath liner of sage and the drain stop of Hess since the addition of Hess flap would be extraneous complication to the Sage pad, examiner disagrees with applicant. Sage discloses a fixture guard panel 11 for a tub comprising a drain opening 27 except a flap covering the drain opening 27. Hess teaches a flap 10 for covering a drain opening 16 in a water tank (or tub). It would have been obvious to one of ordinary skill to employ a flap on the drain opening of the Sage panel device in view of Hess for covering the drain opening. The flap 10 of Hess is capable of protecting a surface against impact damage. Since the panel 11 of Sage is adhesively attached to the bottom of the tub, a flap on the drain opening 27 of liner of Sage would not only serve as a drain plug (with or without the tub drain plug) but also as a protecting means against impact damage. There would be no extraneous complication. The motivation is based on the reasons above.

Regarding applicant's argument that neither Sage or Hess described the first side and the second side are hemmed together at one or more edges to form a closure, examiner disagrees with applicant. Since applicant does not specifically describe how the sides of the panel are "hemmed" together in the claim (i.e. sewn hem or stitched hem), "hemmed together" in this case is broadly interpreted as or joined together. A hem may be formed by sewing (with stitching) but also by stapling, binding or other

securing means such as adhesive (example, glue or heat adhesive). Fig. 8 and Fig. 6 of Sage show the edges of the sheet are joined together.

Regarding applicant's argument that Sage does not disclose a flexible material of a second fixture guard panel comprising a non-skid, non-adhesive material that is different than the flexible of the first fixture guard panel, examiner disagrees with applicant. Sage discloses a second material 16 of a second panel comprising a substance frictionally adhering to the skin of a user when the pad 11 is wet which constitutes a non-skid and non-adhesive (when dry) material. Thus, the material 16 of Sage is different from the first material 18 of the side pad 14 made from a plastic that does not include a non-skip property.

Regarding applicant's arguments with respect to claims 45-50 that Sage fails to disclose any panel is just the pad, examiner disagrees applicant. In Sage, the whole panel 11 is considered to be a "pad" and thus meets the language "consist of" in claim 45. However, applicant points out the claimed panel to the pads 702 and 708 of Fig. 27 (not Fig. 7 as indicated by applicant). Since pads 702 and 708 of Fig. 27 are drawn to species IV, a non-elected species, claims 45-50 now are withdrawn to consideration.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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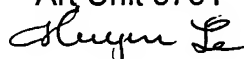
mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huyen Le whose telephone number is 571-272-4890. The examiner can normally be reached on Monday-Friday from 9:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Huyen Le
Primary Examiner
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